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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,619	10/28/2003	Howard Elliott	85328.88008	3907

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EXAMINER

PICKETT, JOHN G

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/695,619	ELLIOTT, HOWARD	
	Examiner	Art Unit	
	Gregory Pickett	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 12 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action acknowledges the applicant's amendment submitted 7 November 2005. Claims 1-12 are pending in the application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Margulies et al [US 4,294,361; hereinafter Margulies; provided by applicant] in view of Price [US 5,339,960; previously provided].

Claim 1: Margulies discloses a container [Figure 1] comprising a tray **10** with a planar top surface and a plurality of cavities **12**, and a cover film **14** having pre-formed tear lines **20 & 26** defining a tear-off portion with an associated lug **22**. Tray **10** has an upwardly extending protrusion **18** to bend lug **22** upwardly out of the plane of cover film **14** [see Figure 3]. Margulies merely lacks the express disclosure of the pre-formed tear lines corresponding to the periphery of the cavities.

Price discloses pre-formed tear lines **18** corresponding to the periphery of cavities **12** for controlled tearing of the cover. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the tear lines **26** of Margulies in a shape corresponding to the periphery of the cavities as taught by Price, in order to control the tearing of the cover film.

4. Claims 2-8, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Margulies-Price as applied to claim 1 above, and further in view of Braverman [US 3,924,748; previously provided].

Claims 2 and 4: Margulies-Price discloses the claimed invention except that Margulies-Price uses a heat seal instead of a peelable adhesive. Braverman shows that a peelable adhesive **50** was an equivalent structure known in the art. Therefore, because these two sealing means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the peelable adhesive of Braverman for the heat seal of Margulies-Price. An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

Claim 3: Margulies discloses an array as claimed.

Claim 5: Margulies-Price-Braverman, as applied to claim 4 above, discloses the claimed invention except for the patches. Braverman discloses patches **52** used to prevent the retained articles from adhering to the cover film. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the film of Margulies-Price-Braverman with patches in order to prevent the retained articles from adhering to the cover film. Such patches would have the claimed vapour barrier properties.

Claim 6: It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend the patch of claim 5 into the lug in order to prevent the lug from adhering to protrusion **18**.

Claims 7 and 8 are product-by-process claims. Claims 1-6 claim the container in assembled form. The claiming of a barrier film amounts to the claiming of the means by which the cover film and patches are formed prior to assembly. The method of forming the device is not germane to the issue patentability of the device itself. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Even so, Braverman discloses a barrier film **44** with preformed tear lines **54 & 56**, which function as claimed.

Claims 11 and 12: Braverman discloses a paper film [Col. 4, lines 23-27] that is non-rupturable within the meaning disclosed by the applicant. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the cover film of paper in order to enable printing on the cover film. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Margulies-Price-Braverman as applied to claim 8 above, and further in view of March [US 3,880,285; previously provided].

Margulies-Price-Braverman discloses the claimed invention except for the projections on the tray and apertures on the cover film.

March discloses projections **47** on a tray **41** cooperatively received by apertures **49** on cover film **16** for rapid assembly of the device [Col. 4, line 64 to Col. 5, line 2]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Margulies-Price-Braverman with projections and apertures as taught by March in order to facilitate rapid assembly of the device.

Allowable Subject Matter

6. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Response to Arguments

7. Applicant's arguments with respect to claims 1-12 have been fully considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. As the examiner has presented new grounds of rejection, this Office Action is made **NON-FINAL**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Greg Pickett
Examiner
18 January 2006



Mickey Yu
Supervisory Patent Examiner
Group 3700